

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN J. KEARNS, Individually and as Personal
Representative of the Estate of THERESA J.
KEARNS, deceased,

Plaintiff- Appellant,

v

COUNTY OF ST. CLAIR, ST. CLAIR COUNTY
ROAD COMMISSION, and ST. CLAIR COUNTY
RETIREMENT BOARD OF TRUSTEES,

Defendants- Appellees.

UNPUBLISHED
November 6, 1998

No. 204534
St. Clair Circuit Court
LC No. 96-003703 NO

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's deceased spouse worked for defendant road commission for three separate periods of time. Upon leaving employment the first two occasions, she received a refund of her retirement contributions, and forfeited her credited service time. At the time of her death, she had not reached the required amount of service credit to qualify plaintiff for a survivor's pension. Plaintiff later sought to reinstate his wife's former service credit to qualify for a pension. Plaintiff's request was denied, and he filed this action. The trial court granted defendants' motion for summary disposition, finding that defendants met their fiduciary duty to plaintiff's wife, and that plaintiff was not a member entitled to seek reinstatement of forfeited credits.

When deciding a motion under MCR 2.116(C)(10), a court must consider all the evidence presented and determine whether a record might be developed that would leave open an issue for trial. *Skinner v Square D Co*, 445 Mich 153, 160-162; 516 NW2d 475 (1994). Once the moving party

* Circuit judge, sitting on the Court of Appeals by assignment.

supports its motion with documentary evidence, the nonmoving party must respond with evidence setting forth specific facts showing that there is a genuine issue for trial. *Richardson v Michigan Humane Society*, 221 Mich App 526, 527; 561 NW2d 873 (1997).

Here, defendants supported their motion with a copy of the retirement ordinance along with affidavits indicating that the materials had been provided to plaintiff's decedent. While plaintiff argued that the plans had not been provided and that other plan members were allowed to reinstate forfeited time after they retired, plaintiff presented no documentary evidence to support these claims, as required by MCR 2.116(G)(4).

The retirement plan is not susceptible to the interpretation given to it by plaintiff. There is no plausible reading of the plan that would allow plaintiff, as the spouse of a member who had yet to accumulate the time needed for vesting, to arrange to reinstate forfeited time to render himself eligible for benefits. The trial court properly granted summary disposition to defendants.

We affirm.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski